IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3147 OF 2006

Devidas Baburao Nanaware ..Petitioner.

Vs.

Umesh Amrutlal Shah (Parekh) & anr. ..Respondents.

...

Mr. P.B. Shah for the Petitioner.
Mr. D. M. Gupte for Respondent No.2.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

19th June, 2006.

P.C. :

1. Both the Courts below have come to the conclusion that the Petitioner has established that he needs the premises bonafide for his own use and occupation and for the occupation of the members of his family. The record before the Trial Court showed that the family of the landlord consists of five persons. The landlord was residing in tenanted premises situated at 312, Nana Peth, Pune. The landlord has two sons and a daughter. The landlord deposed that one of his three children was studying in the 11th standard; that his requirement for providing suitable accommodation for the school going children was reasonable and

bonafide. The suit for eviction was instituted in the year 1999. A decree for eviction was passed by the Trial Court on 19th November, 2004. During the course of the proceedings before the Appellate Court additional evidence came to be recorded since it was the case of the tenant that the landlord had obtained possession in the meantime of two rooms from a tenant by the name of Atul Sonawane. The Appellate Court has considered the evidence and has confirmed the decree for eviction in the judgment and order impugned in these proceedings.

2. The finding of the Appellate Court is that though the landlord obtained possession of certain premises from a tenant by the name of Gehlot, those premises were utilized for the business which is carried out by the landlord and which is described in the judgment of the Appellate Court as a “Ladu Karkhana”. Prior to the suit a tenant by the name of Nana Aher had vacated certain commercial premises which were let out to him in which the landlord is carrying on transport business. The argument of the tenant before the Appellate Court was that the landlord can shift the former business in the premises vacated by Nana Aher. The First Appellate Court was, in my view, justified in holding, on the

basis of the judgment of the Supreme Court in **Minal Eknath v. M/s. Traders and Agencies**[1] that it is not open to the tenant to dictate to the landlord as to how the landlord should adjust his requirement. The First Appellate Court has on the basis of the evidence held that the two residential rooms which were vacated by Atul Sonawane are insufficient to meet the requirement of the landlord for suitable residential accommodation.

3. In the present case, both the Courts have affirmed the need of the landlord as being reasonable and bonafide. The Court cannot compel the landlord to meet his bonafide need for residential premises by utilising premises in which legitimate commercial or business activity is carried on. The issue of comparative hardship has been answered in favour of the landlord on the ground that the tenant had not made any attempt to search the premises. This Court would not be justified in reappreciating the evidence and in arriving at a conclusion at variance with a conclusion which is fairly borne out from the evidence on record The exercise of the jurisdiction under Article 227 is not warranted.

1 AIR 1997 SC 59.

4. The Petition is dismissed. However, having regard to the facts and circumstances of the case, time to vacate the premises is granted to the Petitioner until 30th April, 2007 subject to the filing of the usual undertaking within a period of two weeks from today.